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for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and the Chapter 7 Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC and the Estate  
of Bernard L. Madoff,

Plaintiff,

v.

SQUARE ONE FUND LTD.,

Defendant.

Adv. Pro. No. 10-04330 (CGM)

**TRUSTEE'S REPLY IN FURTHER SUPPORT OF  
ORDER APPOINTING A DISCOVERY ARBITRATOR  
PURSUANT TO BANKRUPTCY RULE 9019(c) AND GENERAL ORDER M-390**

Square One's Objections filed on May 26, 2023 mischaracterizes and attempts to obfuscate what should be a very simple matter. To be clear, the Trustee's only issue with Square One's proposed order (ECF No. 272-1) is Square One's refusal to equally share mediation costs with the Trustee.

In October 2016, the Court entered the Order Appointing a Discovery Arbitrator Pursuant to Bankruptcy Rule 9019(c) and General Order M-390, Adv. Pro. No. 08-01789, ECF No. 14227 (the "Discovery Arbitrator Order"). At that time, the Trustee was litigating a large number of discovery disputes with good faith defendants—individuals, trusts, or small entities not alleged to have received transfers in bad faith. Seeking uniformity and expediency in the resolution of those good faith disputes, the Trustee requested that the Court appoint Judge Maas as the discovery arbitrator and agreed to pay the first \$50,000 in arbitration costs.

The fee arrangement in the Discovery Arbitrator Order should not benefit non-good faith Defendants such as Square One. The Trustee and Square One, parties on equal footing, should share arbitration costs equally, as the Trustee has done with other bad faith defendants in discovery disputes referred to Judge Maas. *See* Exhibit A (Stipulation and Order Appointing A Discovery Arbitrator Pursuant to Bankruptcy Rule 9019(c) and General Order M-390, *Picard v. HSBC Bank plc, et al.*, Adv. Pro. No. 09-01364, ECF No. 498 (Bankr. S.D.N.Y. Mar. 29, 2018)); Exhibit B (Amended Stipulation and Order, *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-0485, ECF No. 266 (Bankr. S.D.N.Y. Nov. 24, 2020)).

While the Court has scheduled a hearing on this matter for June 21, the parties have already held a preliminary conference with Judge Maas and agreed to a briefing schedule, commencing with the Trustee submitting an opening brief on June 22. The only remaining issue to be decided by this Court is costs. Attached as Exhibit C for the Court's consideration is an Amended Proposed Order, replicating Square One's proposed order with one change to Paragraph (ii): "The costs of

the Discovery Arbitrator Shall be shared equally by the Trustee and Square One based on the Discovery Arbitrator's current fees." Finally, attached for the Court's reference as Exhibit D is the Trustee's Amended Proposed Order with tracked changes showing the sole change made to Paragraph (ii).

Dated: June 2, 2023  
New York, New York

By: /s/ Andrew M. Serrao  
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